

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPELLANTS: Suresh Kumar
SERIAL NO.: 09/531,703
FILING DATE: March 20, 2000
TITLE: Method And System For Bidding on Multiple Auctions
EXAMINER: Frantzy Poinvil
GROUP ART UNIT: 3692
ATTY. DKT. NO.: 23984-13950

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Dated: June 16, 2009

By: /Jennifer R. Bush/

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APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. § 41.41

This Brief is in reply to the replacement Examiner's Answer mailed April 16, 2009, and replaces the Reply Brief filed on December 26, 2006.

REPLY TO ANSWER

I. Examiner's Answer Takes Inconsistent Positions Regarding Appellant's "Bidding Technique" and "Bidding Plan"

Appellant's "bidding technique" or "bidding plan" specifies conditions under which bids are to be placed at various auctions. Specifically, claims 1, 10, and 40 recite "receiving an indication of a bidding technique to apply to the indicated auctions," which are the "plurality of auctions" of the preceding element, and claim 33 recites "means for receiving a bidding plan that specifies to bid at multiple auctions."

It is unclear what the Examiner believes to be the corollary in Ausubel of the claimed "bidding technique" and "bidding plan." In some portions of the Examiner's Answer, and consistent with the Office Action dated June 16, 2005, the Examiner relies upon Ausubel's "bidding rules" for the claimed "bidding technique" and "bidding plan." *See, e.g.,* Examiner's Answer at p. 5-6, *citing* Ausubel, col. 10, l. 56 to col. 12, l. 19. In other portions of the Examiner's Answer, the Examiner **newly** takes the position that the rules governing different auction types as described in Ausubel (e.g., English, Vickery, etc. types of auctions) are equivalent to the claimed "bidding techniques." Appellant notes that in addition to these positions being inconsistent with and contrary to each other, neither shows the claimed "bidding technique" or "bidding plan." Appellant addresses these positions in the order presented above.

As discussed in detail in the Appeal Brief filed July 14, 2006, Ausubel's "bidding rules" are rules for placing bids on **a single auction** for multiple items. *See* Appeal Brief, p. 9-11. In contrast, the claims recite that the "bidding technique" is to be applied to the indicated **plurality of auctions**, and the "bidding plan" specifies bids for **multiple auctions**. *See* claims 1, 10, 33, and 40.

With respect to Ausubel's rules governing the different auction types (e.g., English, Vickery, etc.), these rules are the basis for management of the different auction types, i.e., how to determine a winning bidder for that auction type and the amount of the winning bid. For

example, as indicated by the Examiner, the bidding rules in an English auction specify that “The auctioneer or computer system begins presenting low bids to bidders. Buyers call out bids to overcome a current price. The last remaining bidder wins the item and pays the price that he/she has bid.” Examiner’s Answer, p. 7 (apparently paraphrasing Ausubel¹). Appellant notes that the Examiner provides no specific citation of Ausubel for this argument. It is unclear to the Appellant how such auction type-specific rules could be a received “indication of a bidding technique to apply to the indicated auctions” as claimed. Presumably, since the plurality of auctions would have been previously indicated, such rules would inherently be used in those auctions as dictated by the auction type; they would not be “receiv[ed as] an indication of a bidding technique **to apply to** the indicated auctions” (emphasis added).

The Examiner’s use of these contrary positions regarding “bidding technique” and “bidding plan” produces nonsensical readings of the Ausubel reference. For example, the Examiner indicates that “A bidder may propose different bidding techniques in proceeding in an auction.” Examiner’s Answer, p. 8. Following the auction type rules position above, this would mean that a user could specify the auction type for an auction. Ausubel makes no suggestion of a situation in which a bidder at an auction can propose different auction types. Furthermore, it would seem nonsensical to allow a bidder to change the type of an auction (e.g., from English to Vickery).

Thus, Ausubel does not disclose or suggest “receiving an indication of a bidding technique to apply to the indicated auctions” nor “means for receiving a bidding plan that specifies to bid at multiple auctions.”

II. Examiner’s Answer Misrepresents Content of Krishna Publication

¹ The Examiner’s Answer on p. 7 includes an italicized section that looked at first glance to be a quote from Ausubel; however, none of the italicized text can be found in the Ausubel reference, and therefore is believed to be the Examiner’s own paraphrasing of auction types from Ausubel.

In the Examiner's Answer, the Examiner makes the following statement about the book AUCTION THEORY by Professor Vijay Krishna ("Krishna"). Specifically, the Answer argues: "it is noted that only scenarios that may involve in "multiple auctions" and "a single auction of multiple items" are explained. It is not positively indicated that "multiple auctions" and "a single auction of multiple items" are different auctions." Examiner's Answer, p. 8. Appellant respectfully disagrees. According to Krishna:

First, the seller must decide whether to sell the objects separately in *multiple auctions* or jointly in a *single auction*. In the former case, the objects are sold one at a time in separate auctions—conducted sequentially....In the latter case, the objects are sold at one go in a single auction, but not necessarily to the same bidder....

p. 165 (emphasis in original).

It is clear from this language ("or"; "in the former case"; "in the latter case") and context that Krishna presents "multiple auctions" and "a single auction of multiple items" as alternative auction formats. The argument that it is not clear that these formats are different auctions is untenable. Thus, Appellant submits that the examples provided in Krishna, and elucidated by the arguments in the Appeal Brief (p. 10-11), stand for the proposition that these are in fact different auction formats. The claims recite a plurality of auctions/multiple auctions, whereas Ausubel describes only a single auction of multiple items.

III. Examiner's Answer Misconstrues a Typographical Error in a Way That is Inconsistent with the Overall Tenor of Appellant's Appeal Brief

The Examiner quotes the following from Appellant's Appeal Brief: "The Examiner's assertion that a single auction for multiple items is identical to multiple auctions is contrary is how one skilled in the art views such an auction." (emphasis added) It is clear from the text

itself that the sentence includes a typo, since “assertion ... is contrary is how ...” does not make sense verbatim. The Examiner then alleges that this statement is evidence that they are in fact identical. This reading is inconsistent with the overall tenor of Appellant’s arguments, which specifically assert the opposite argument.

The sentence in the Appeal Brief should have read: The Examiner’s assertion that a single auction for multiple items is identical to multiple auctions is contrary **to** how one skilled in the art views such an auction. This statement is consistent with the arguments presented in the Appeal Brief and with the rest of the paragraph in which it occurs. For example, *see* Appeal Brief, pp. 10, 11, 14, 22, 23. Therefore, notwithstanding Appellant’s typographical mistake in one sentence in the Appeal Brief, Appellant respectfully submits that the remainder of the Appeal Brief makes clear Appellant’s position regarding the distinction between a single auction for multiple items and multiple auctions, and that the Examiner should have realized that Appellant’s statement relied upon by the Examiner did in fact contain an error and, therefore, should not have been relied upon by the Examiner.

Moreover, this Reply Brief should now make it absolutely clear that Appellant’s position regarding the distinction between a single auction for multiple items and multiple auctions, which Examiner’s positions fail to properly distinguish.

Respectfully submitted,

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